IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 25355 of 2007(R)

OS.436/2005 of MUNSIFF COURT,MUVATTUPUZHA
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PETITIONER:

SURENDRAN KARTHA, AGED 47,
S/O. PADMANABHAN KARTHA, KIZHAKKEKOTTAYIL HOUSE,
PAYIPRA KARA, MULAVOOR VILLAGE,
MUVATTUPUZHA TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:

THULASEEDHARAN KARTHA, S/O. PADMANABHAN
KARTHA, KIZHAKKEKOTTAYIL HOUSE, PAYIPRA KARA,
MULAVOOR VILLAGE, MUVATTUPUZHA TALUK.

BY /

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN , J

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W.P.(C) NO. 25355 OF 2007

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Dated this the 21st day of August, 2007.

JUDGMENT

This writ petition is filed challenging Ext.P6 order whereby the court refused to review Ext.P4 order passed by it on the basis of Ext.P5 application. The suit is one with respect to a right of way. The contention of the plaintiff is that the way is granted by virtue of partition deed and it is to find out that way the suit is filed. The court after closure of evidence found that the commissioner's plan and report is necessary and the properties have to be measured and the way has to be identified. In a suit of this nature, one cannot blame the court for suo moto reopening the case and issuing a commission in order to resolve the controversy between the parties. But, the court shall permit all the parties to file work memo before the commissioner regarding the points which they want the commissioner to note. After receipt of the commissioner's report, the court shall give an opportunity to both sides to file objections if any and if necessary to adduce additional evidence in support of their respective contentions. After complying with all the procedural and formalities, the court shall dispose of the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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